

1 equal to or greater than \$3.5 million but less than \$4.5 million, the \$100,000 payment shall be
 2 increased to \$700,000; (ii) if unrestricted cash (as calculated above) is equal to or greater than
 3 \$4.5 million but less than \$5.5 million, the \$400,000 payment shall be increased to
 4 \$1,000,000; and (iii) if unrestricted cash (as calculated above) is equal to or greater than \$5.5
 5 million, the \$400,000 payment shall be increased to \$1.5 million, in each case with the
 subsequent quarterly installments reduced by a corresponding amount to provide for equal
 payments over the payout periods discussed above. In no event shall the aggregate Cash
 payments to the First Lien Lenders exceed \$1.5 million.

6 7. General Unsecured Claims Purchase

7 8. The First Lien Lenders have agreed to use the aggregate \$1.5 million Cash payment
 provided to them under the Plan to acquire those General Unsecured Claims of the Creditors
 listed on the schedule attached hereto as Exhibit H (the "Claim Purchase Schedule") to the
 extent such Claims remain outstanding as of the Effective Date; provided that (i) each Holder
 10 of a Claim so listed is the original Holder of such Claim and (ii) such Claim(s) is ultimately
 Allowed.

11 12. The Claim Purchase Schedule shall delineate whether such Claims are Allowed or
 Disputed and Claims may be purchased only to the extent ultimately Allowed. Claims
 included on the Claim Purchase Schedule shall be purchased (subject to the conditions
 contained in Article VII.G of the Plan) for the amounts listed for such Claims under the
 heading "Allowed Amount (Claim Purchase Amount)" on the Claim Purchase Schedule.
 Payments on account of the purchased Allowed Claims listed on the Claim Purchase
 Schedule shall be made on the same time frame as the First Lien Lenders receive their
 allocable Cash payments under Article VII.F of the Plan, with the First Lien Steering
 Committee determining the order in which Claims are purchased (which, in the first
 instance, shall be the order in which they are listed on the Claim Purchase Schedule).
 For the avoidance of doubt, any claim listed on the Claim Purchase Schedule that is disputed,
 will not be purchased until allowed and only to the extent the aggregate purchase price for all
 claims purchased inclusive of such newly allowed claims are equal to or less than \$1.5
 million. Claims subsequently allowed will be purchased in the order in which they are
 allowed. The First Lien Lenders reserve the right to modify the Claim Purchase Schedule
 prior to or subsequent to the Effective Date without further Court order; provided, that a
 Creditor may be removed from the Claim Purchase Schedule only to the extent that (i) its
 Claims are not ultimately Allowed, (ii) its Claims are subject to setoff (other than under
 section 547 of the Bankruptcy Code); (iii) such Creditor sells its Claim to a party other than
 the First Lien Lenders pursuant to Article VII.G of the Plan or (iv) the full \$1.5 million has
 been used to purchase other Allowed Claims on the Claim Purchase Schedule before such
 Creditor's Claim is Allowed.

25 26. The First Lien Lenders shall be subrogated to the rights of Creditors whose Claims are
 purchased hereunder and any distributions otherwise allocable to the Holders of Claims
 purchased by the First Lien Lenders shall be distributed pro rata to the Holders of First Lien
 Lender Secured Claims. The Reorganized Debtors shall be authorized to make the foregoing
 payments to the Creditors on the Claim Purchase Schedule on behalf of the First Lien Lenders. Under
 27
 28 with a corresponding reduction in the \$1.5 million payable to the First Lien Lenders. Under

1 no circumstances shall the First Lien Lenders (either directly or through the Reorganized
 2 Debtors) pay in excess of \$1.5 million in the aggregate for the Claims on the Claim Purchase
 3 Schedule. The First Lien Steering Committee may, in its sole discretion (but after
 4 consultation with the Debtors and the Creditors' Committee), add Claims to the Claim
 5 Purchase Schedule at any time; provided that the amount to be paid for all such Claims listed
 6 on the Claim Purchase Schedule does not exceed \$1.5 million in the aggregate regardless of
 7 the total amount of Allowed Claims reflected on the Claim Purchase Schedule. In the event
 8 that Allowed Claims in excess of \$1.5 million are listed on the Claim Purchase Schedule,
 9 Holders of Claims listed on the Claim Purchase Schedule shall have the right to accept or
 10 decline payment of less than 100 cents on account of their Claims from the First Lien Lenders.
 11 No Creditor listed on the Claim Purchase Schedule shall receive in excess of 100 cents on the
 12 dollar for its Claim, and the Reorganized Debtors shall not pursue Claims under Bankruptcy
 13 Code section 547 against any Creditor whose Claim is purchased in accordance with Article
 14 VII.G of the Plan. The Plan shall serve as the notice of transfer of Claim required under
 15 Bankruptcy Rule 3001(e). If no objections are received by the Voting Deadline, the First
 16 Lien Lenders shall be authorized upon the Effective Date to effectuate the foregoing Claim
 17 purchase transactions.

18 8. Claims Trading and Gifting are Authorized Under Applicable Law

19 As described in Article VII.G of the Plan, the Plan provides that Holders of First Lien
 20 Lender Secured Claims will receive, among other things, \$1.5 million in Cash from the
 21 proceeds of their Collateral to be used to purchase those General Unsecured Claims listed on
 22 the Claim Purchase Schedule. The First Lien Steering Committee believes that the purchase
 23 of Claims listed on the Claim Purchase Schedule constitutes permissible claims trading under
 24 the Bankruptcy Code, the Bankruptcy Rules and applicable case law. As a general rule,
 25 neither the Bankruptcy Code nor the Bankruptcy Rules prohibit the purchase or sale of claims.
 26 See *Official Unsecured Creditors' Comm. v. Stern (In re SPM Mfg. Corp.)*, 984 F.2d 1305,
 27 1314 (1st Cir. 1993) (noting that "neither the [Bankruptcy Code] nor the [Bankruptcy Rules]
 28 prohibit or discourage creditors from receiving cash from non-debtors in exchange for their
 claims"). In addition, Bankruptcy Rule 3001(e)(2) limits the role of bankruptcy courts in the
 claims transfer process to resolving disputes regarding transfers of claims. See *Resurgent
 Capital Servs. v. Burnett (In re Burnett)*, 306 B.R. 313, 319 (B.A.P. 9th Cir. 2004) (explaining
 that Bankruptcy Rule 3001(e)(2) was amended to limit the bankruptcy court's role to
 adjudicating disputes over transfers of claims); *Viking Assocs., L.L.C. v. Drewes (In re Olson)*,
 120 F.3d 98, 102 (8th Cir. 1997) (noting that "[w]here there is no dispute [with respect to a
 claims transfer], there is no longer any role for the court"). For purposes of Bankruptcy Rule
 3001(e)(2), a "dispute" regarding a transfer of a claim exists only if the alleged transferor files
 an objection to the transfer. See *In re Olson*, 120 F.3d at 102. Bankruptcy Rule 3001(e)(2)
 does not require the parties to a claims transfer to disclose the terms of such transfer to the
 bankruptcy court. See *In re Burnett*, 306 B.R. at 318. Finally, there is no requirement in the
 Bankruptcy Code or the Bankruptcy Rules that a non-debtor that purchases claims from one
 member of a class of creditors must seek to purchase the claims of all of the members of that
 class.

Based on the foregoing, the First Lien Steering Committee believes that the purchase
 of the Claims listed on the Claim Purchase Schedule by the Holders of First Lien Lender

1 Secured Claims is permissible under the Bankruptcy Code and the Bankruptcy Rules.
 2 Moreover, the First Lien Steering Committee believes that the First Lien Lenders have the
 3 discretion to purchase only a portion of the total number of General Unsecured Claims.
 4 Finally, absent an objection to the purchase of a Claim, the First Lien Steering Committee
 5 submits that the Claim purchase procedures contemplated by the Plan do not require
 6 Bankruptcy Court approval and that the First Lien Lenders are authorized to implement the
 7 Claim purchase procedures in accordance with Article VII.G of the Plan.

8 In the alternative, the First Lien Steering Committee believes that the purchase of
 9 General Unsecured Claims described in Article VII.F. and VII.G of the Plan is consistent with
 10 the Bankruptcy Code and applicable case law because the Holders of First Lien Lender
 11 Secured Claims are permitted to share the distributions they receive under the Plan with
 12 Holders of junior Claims if they wish to do so. Courts have recognized that holders of
 13 secured claims are free to grant all or a portion of the distribution they receive under a plan of
 14 reorganization on account of their secured claims to holders of junior claims. *See In re SPM*
Mfg. Co., 984 F.2d at 1313; *In re Union Fin. Servs. Group, Inc.*, 303 B.R. 390, 422 (Bankr.
 15 E.D. Mo. 2003); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 602 (Bankr. D. Del. 2001).
 16 in addition, courts have concluded that there is no unfair discrimination under the Bankruptcy
 17 Code where holders of secured claims share the distribution they receive under a plan of
 18 reorganization with members of a junior class but not other holders of claims that are equal in
 19 priority to such junior class of claims. *See In re Union Fin. Servs. Group, Inc.*, 303 B.R. at
 20 422; *In re Genesis Health Ventures, Inc.*, 266 B.R. at 602. This is particularly true where
 21 continued relations with certain junior creditors are important to the future business of a
 22 reorganized debtor. *See In re Union Fin. Servs., Inc.* 303 B.R. at 422. In light of the
 23 foregoing, the First Lien Steering Committee believes that the Holders of First Lien Lender
 24 Secured Claims should be authorized to gift the \$1.5 million in Cash they will receive under
 25 the Plan to Holders of those General Unsecured Claims listed on the Claim Purchase
 26 Schedule.

27 As the Plan provides for all General Unsecured Claims to receive the same treatment
 28 under the Plan, the First Lien Lenders are authorized under applicable law to purchase any one
 or more Claims without Bankruptcy Court approval. In the alternative, the purchase of those
 Claims listed on the Claim Purchase Schedule constitutes a permissible gift and should be
 authorized by the Bankruptcy Court. In addition, the payment of the Second Lien Agent's
 legal fees similarly constitutes a permissible gift from the First Lien Lenders to the Second
 Lien Lenders and should be authorized by the Bankruptcy Court.

29 **J. Effect of Confirmation of the Plan**

30 **1. Discharge of Claims and Termination of Interests**

31 Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise
 32 specifically provided in the Plan, the distributions, rights, and treatment that are provided in
 33 the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective
 34 Date, of Claims, Interests, and Causes of Action of any nature whatsoever, including any
 35 interest accrued on Claims or Interests from and after the Petition Date, whether known or
 36 unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the

1 Debtors or any of their assets or properties, regardless of whether any property shall have
 2 been distributed or retained pursuant to the Plan on account of such Claims and Interests,
 3 including demands, liabilities, and Causes of Action that arose before the Effective Date, any
 4 liability (including withdrawal liability) to the extent such Claims or Interests relate to
 5 services performed by employees of the Debtors prior to the Effective Date and that arise
 6 from a termination of any employee, regardless of whether such termination occurred prior to
 7 or after the Effective Date, any contingent or non-contingent liability on account of
 8 representations or warranties issued on or before the Effective Date, and all debts of the kind
 9 specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether
 10 or not: (1) a Proof of Claim or Interest based upon such debt, right, or Interest is Filed or
 11 deemed Filed pursuant to section 501 of the Bankruptcy Code; (2) a Claim or Interest based
 12 upon such debt, right, or Interest is Allowed pursuant to section 502 of the Bankruptcy Code;
 13 or (3) the Holder of such a Claim or Interest has accepted the Plan. Any default by the
 14 Debtors with respect to any Claim or Interest that existed immediately prior to or on account
 15 of the filing of the Chapter 11 Cases shall be deemed Cured on the Effective Date. The
 16 Confirmation Order shall be a judicial determination of the discharge of all Claims and
 17 Interests subject to the Effective Date occurring.

18 2. Subordinated Claims

19 The allowance, classification, and treatment of all Allowed Claims and Interests and
 20 the respective distributions and treatments under the Plan take into account and conform to the
 21 relative priority and rights of the Claims and Interests in each Class in connection with any
 22 contractual, legal, and equitable subordination rights relating thereto, whether arising under
 23 general principles of equitable subordination, section 510(b) of the Bankruptcy Code, or
 24 otherwise. Pursuant to section 510 of the Bankruptcy Code, the Plan Proponent or
 25 Reorganized Debtors, as applicable, reserve the right to re-classify any Allowed Claim or
 26 Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

27 3. Compromise and Settlement of Claims and Controversies

28 Pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019 and in
 1 consideration for the distributions and other benefits provided pursuant to the Plan, the
 2 provisions of the Plan shall constitute a good faith compromise of all Claims, Interests, and
 3 controversies relating to the contractual, legal, and subordination rights that a Holder of a
 4 Claim may have with respect to any Allowed Claim or Interest, or any distribution to be made
 5 on account of such an Allowed Claim or Interest. The entry of the Confirmation Order shall
 6 constitute the Bankruptcy Court's approval of the compromise or settlement of all such
 7 Claims, Interests, and controversies, as well as a finding by the Bankruptcy Court that such
 8 compromise or settlement is in the best interests of the Debtors, their Estates, and Holders of
 9 Claims and Interests and is fair, equitable, and reasonable. In accordance with the provisions
 10 of the Plan, pursuant to section 363 of the Bankruptcy Code and Bankruptcy Rule 9019(a),
 11 without any further notice to or action, order, or approval of the Bankruptcy Court, after the
 12 Effective Date, the Reorganized Debtors may compromise and settle Claims against them and
 13 Causes of Action against other Entities.

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1 The First Lien Steering Committee believes that the Mediation Settlement is
 2 reasonable and should be approved under Bankruptcy Rule 9019. In order to determine
 3 whether a compromise may be approved under Bankruptcy Rule 9019, the Bankruptcy Court
 4 must consider four factors: (i) the probability of success of the litigation; (ii) the difficulties, if
 5 any, to be encountered in the matter of collection; (iii) the complexity of the litigation
 6 involved, and the expense, inconvenience and delay necessarily attending it; and (iv) the
 7 paramount interest of the creditors and a proper deference to their reasonable views in the
 8 premises. *See, e.g., In re A&C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986). A
 9 compromise may be approved even if all four of the factors do not favor the compromise so
 long as the factors weigh in favor of the compromise when taken as a whole. *See In re Pac.*
Gas and Elec. Co., 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004). In addition, a compromise
 does not have to be the best compromise that could have possibly been obtained but, instead,
 must only fall within a reasonable range of possible outcomes. *In re WCI Cable, Inc.*, 282
 B.R. 457, 473-74 (Bankr. D. Or. 2002).

10 Based on the foregoing, the First Lien Steering Committee believes that the
 11 compromise embodied in the Plan and the Mediation Settlement is fair and equitable.
 12 Specifically, the Mediation Settlement represents a global resolution of, among other things,
 13 potential preference actions held by the Debtors' Estates relating to the transfer of funds to
 14 certain Rhodes Entities within the one year period prior to the Petition Date, issues related to
 15 operation of the Reorganized Debtors' businesses and the ownership of the Rhodes Ranch
 16 Golf Course.

17 The First Lien Steering Committee estimates that the total amount of all payments
 18 made by the Debtors to the Rhodes Entities within the year prior to the Petition Date is in
 19 excess of \$9 million. With respect to the first factor articulated by the *A&C Properties* Court,
 20 litigation over the potential preference payments identified herein would have been
 21 contentious and hard fought. The Rhodes Entities would likely have asserted a number of
 22 defenses to the preference claims, including that such payments were received in the ordinary
 23 course of business. Moreover, based on the First Lien Steering Committee's review of all
 24 payments made to insiders within the one year period prior to the Petition Date as reflected in
 25 the Debtors' Schedules and Schedule B to the Mediation Settlement Term Sheet, and on
 26 subsequent conversations with Debtors' counsel, the First Lien Steering Committee believes
 27 that the Rhodes Entities may have had valid defenses to certain of these transfers. The
 28 Mediation Settlement also reflects a resolution of potential fraudulent conveyance actions held
 by the Estates against the Rhodes Entities. The First Lien Steering Committee believes that
 these claims would also have been heavily litigated in the absence of a settlement and, while
 the First Lien Steering Committee believes that it would have ultimately prevailed on certain
 of such claims, there can be no guarantee that a successful result would have been obtained
 for the Estates. In addition, the prosecution of both the fraudulent conveyance claims and the
 preference claims would have resulted in substantial expense for the Estates, while at the same
 time likely delaying the Debtors' emergence from chapter 11. Therefore, the First Lien

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1 Steering Committee believes that the third factor of the *A&C Properties* test also weighs in
 2 favor of the approval of the Mediation Settlement.⁵

3 The fourth factor of the *A&C Properties* test requires the Bankruptcy Court to consider
 4 the paramount interest of creditors. The creditors of the Estates will derive a material benefit
 5 from the approval of the Mediation Settlement because, among other things, the Mediation
 6 Settlement (i) contemplates a \$3.5 million cash payment from the Rhodes Entities to the
 7 Reorganized Debtors, which payment will be used to fund working capital needs and
 8 distributions contemplated by the Plan, (ii) provides for the transfer of the Arizona Assets,
 9 which were non-core assets to the Reorganized Debtors that likely would have required
 10 significant additional funding for development, to the Rhodes Entities, (iii) provides for the
 11 transfer of the Rhodes Ranch Golf Course, the maintenance and continued operation of which
 12 is paramount to maximizing the value of the Reorganized Debtors' assets, to the Reorganized
 13 Debtors, (iv) avoids the significant expense and time delay associated with litigating the
 14 claims released under the Plan, which would have yielded uncertain results, and (v) enables
 15 the Debtors to emerge from bankruptcy expeditiously and consensually, without any
 16 unnecessary eradication of value through a prolonged stay in chapter 11. In addition, all
 17 claims and causes of action against the Rhodes Entities that are not covered by the limited
 18 release provided for in the Mediation Settlement will be transferred to the Litigation Trust for
 19 the benefit of all Creditors, to be prosecuted and/or settled post-emergence.

20 In addition to the material benefits listed above, the First Lien Steering Committee
 21 believes that the Mediation Settlement will also ensure a smooth transition to new ownership
 22 under the Plan. The Mediation Settlement contemplates that stringent bond and licensing
 23 requirements will be maintained through the cooperation of the Rhodes Entities, thus allowing
 24 the Reorganized Debtors to continue operations without interruption upon emergence. The
 25 Mediation Settlement also contemplates that new Qualified Employees and HOA board
 26 representatives will be elected by the Reorganized Debtors to ensure a unified and organized
 27 post-Effective Date management team. On balance, the First Lien Steering Committee
 28 believes that the Estates and their creditors will be obtaining value far in excess of the
 29 consideration to be given to the Rhodes Entities if the Mediation Settlement is approved.
 30 Given the range of issues involved, and the nature and character of the disputes between the
 31 First Lien Steering Committee, the Debtors and Rhodes, the First Lien Steering Committee
 32 believes that approval of the Mediation Settlement is appropriate. In addition, as set forth
 33 above, the Mediation Statement satisfies the fair and reasonable standards articulated by
 34 courts in this circuit. The entry of the Confirmation Order shall therefore constitute the
 35 Bankruptcy Court's approval of the compromise and settlement of the matters subject to the
 36 Mediation Settlement as well as a finding by the Bankruptcy Court that such compromise and

27 ⁵ The second factor to be considered by the Bankruptcy Court in evaluating a settlement proposal is the
 28 difficulties, if any, to be encountered in the matter of collection. The First Lien Steering Committee has not
 29 completed a detailed review of the financial information of each Rhodes Entity that may have been liable in
 30 connection with the claims released under the Plan, and cannot therefore make a determination as to whether each
 31 such entity could have satisfied its obligations in connection with any judgment entered by the Bankruptcy Court.
 32 The First Lien Steering Committee does, however, believe that the Rhodes Entities may not have been able to
 33 comply financially with the terms of judgments received in connection with successful litigation regarding the
 34 claims being released under the Plan.

1 settlement is in the best interests of the Debtors, their Estates, and holders of claims and
 2 interests and is fair, equitable, and reasonable.

3 4. Releases by the Debtors of the Released Parties

4 As described in greater detail below, the Plan contemplates that the Released
 5 Parties will receive a release of all Claims and Causes of Action other than Claims and
 6 Causes of Action for gross negligence or willful misconduct. The "Released Parties"
 7 include each of: (a) the First Lien Lenders in their capacity as such; (b) the First Lien
 8 Steering Committee; (c) the Second Lien Lenders in their capacity as such; (d) with
 9 respect to each of the foregoing Entities in clauses (a) through (c), such Entities'
 10 predecessors, successors and assigns; (e) the Creditors' Committee and the members
 11 thereof in their capacity as such; (f) with respect to each of the foregoing Entities in
 12 clauses (a) through (e), such Entities' subsidiaries, affiliates, officers, members, directors,
 13 principals, employees, agents, financial advisors, attorneys, accountants, investment
 bankers, consultants, representatives, and other Professionals; (g) the Debtors' officers,
 employees (including Thomas Robinson and Joseph Schramm) and Professionals, as of
 the Petition Date; and (h) Paul Huygens; provided, however, that clause (g) shall not
 include (i) the Rhodes Entities or their affiliates; (ii) insiders of any of the Rhodes
 Entities (except as to Thomas Robinson and Joseph Schramm); or (iii) relatives of
 Rhodes.

14 The Plan provides the First Lien Lenders and the Second Lien Lenders with the
 15 releases described below as consideration for the First Lien Lenders' and Second Lien
 16 Lenders' good faith participation in the mediation session described in Article I.A and
 17 Article I.B hereof. Moreover, the First Lien Lenders are being released in exchange for
 18 their agreement to accept equity in Newco on account of the Secured portion of their
 19 Claims rather than exercising their contractual right to foreclose on their Collateral, and
 the First Lien Lenders' willingness to provide junior classes with a recovery in the form
 of the Claims purchase procedures outlined in Article VII.G of the Plan and the payment
 of the Second Lien Agent's legal fees.

20 Pursuant to section 1123(b) of the Bankruptcy Code and except as otherwise
 21 specifically provided in the Plan, for good and valuable consideration, including the
 22 service of the Released Parties to facilitate the expeditious reorganization of the Debtors
 23 and the implementation of the restructuring contemplated by the Plan, and as part of
 24 the global settlement described in Article I.B. hereof, on and after the Effective Date, the
 25 Released Parties are deemed released by the Debtors, the Reorganized Debtors, and the
 26 Estates from any and all Claims, obligations, rights, suits, damages, Causes of Action,
 27 remedies, and liabilities whatsoever, including any derivative Claims asserted on behalf
 28 of the Debtors, taking place on or before the Effective Date, whether known or unknown,
 foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that
 the Debtors, the Reorganized Debtors or the Estates would have been legally entitled to
 assert in their own right (whether individually or collectively) or on behalf of the Holder
 of any Claim or Interest or other Entity, based on or relating to, or in any manner
 arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the purchase, sale,
 or rescission of the purchase or sale of any Security of the Debtors, the subject matter of,

1 or the transactions or events giving rise to, any Claim or Interest that is treated in the
 2 Plan, the business or contractual arrangements between any Debtor and any of the
 3 Released Parties, the restructuring of Claims and Interests prior to or in the Chapter 11
 4 Cases, the negotiation, formulation, or preparation of the Plan and Disclosure Statement,
 5 or related agreements, instruments, or other documents, upon any other act or omission,
 6 transaction, agreement, event, or other occurrence taking place on or before the
 7 Effective Date.

8 5. Releases by the Debtors of the Rhodes Entities

9 The Rhodes Entities shall be deemed released from any and all Claims,
 10 obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever
 11 arising under chapter 5 of the Bankruptcy Code with respect to transfers made by the
 12 Debtors to the Rhodes Entities during the 2 years prior to the Petition Date; provided,
 13 however, that such release shall only apply to transfers expressly set forth in the
 14 Schedules as Filed with the Bankruptcy Court as of August 1, 2009 or as disclosed in
 15 Attachment B to the Mediation Term Sheet.

16 6. Releases by First Lien Lenders of First Lien Lenders

17 As described in greater detail below, the Plan contemplates that each First Lien
 18 Lender can elect to release all other First Lien Lenders for all Claims and Causes of
 19 Action other than Claims and Causes of action for gross negligence or willful
 20 misconduct.

21 Pursuant to Bankruptcy Rule 9019, and except as otherwise specifically provided
 22 in the Plan, to the extent a First Lien Lender elects on its Ballot to release the First Lien
 23 Lenders in accordance with Section VIII.F. of the Plan, for good and valuable
 24 consideration, on and after the Effective Date, to the extent permitted under applicable
 25 law, each of the First Lien Lenders electing to grant this release, shall be deemed to
 26 release each of the other First Lien Lenders that has elected to grant this release and
 27 each of their affiliates from any and all Claims, obligations, rights, suits, damages,
 28 Causes of Action, remedies, and liabilities whatsoever, whether known or unknown,
 foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that
 such First Lien Lender would have been legally entitled to assert against any other First
 Lien Lender that elected to grant this release, based on or relating to, or in any manner
 arising from, in whole or in part, the First Lien Credit Agreement, the First Lien Lender
 Claims, any other claims arising under or related to the First Lien Credit Agreement, the
 Debtors, the Chapter 11 Cases, the subject matter of, or the transactions or events giving
 rise to any First Lien Lender Claim, the restructuring of the First Lien Lender Claims
 prior to or during the Chapter 11 Cases, the negotiation, formulation, or preparation of
 the Plan and Disclosure Statement, or related agreements, instruments, or other
 documents, upon any other act or omission, transaction, agreement, event, or other
 occurrence taking place on or before the Effective Date; with such releases constituting
 an express waiver and relinquishment by each First Lien Lender electing to grant this
 release of any claims, whether known or unknown that such First Lien Lender may have
 under Section 1542 of the California Civil code or other analogous state or federal law

1 related to the matters being released; provided, however, that Claims or liabilities
 2 arising out of or relating to any act or omission of any First Lien Lender or any of its
 3 affiliates that constitutes gross negligence or willful misconduct shall not be released.

4 7. Exculpation

5 Except as otherwise specifically provided in the Plan, no Exculpated Party shall
 6 have or incur, and each Exculpated Party is hereby released and exculpated from any
 7 Claim, obligation, Cause of Action, or liability to one another or to any Exculpating
 8 Party for any Exculpated Claim, except for gross negligence, willful misconduct or fraud
 9 but in all respects such Entities shall be entitled to reasonably rely upon the advice of
 10 counsel with respect to their duties and responsibilities pursuant to the Plan. The
 11 Debtors, the First Lien Steering Committee and the Reorganized Debtors (and each of
 12 their respective agents, members, directors, officers, employees, advisors, and attorneys)
 13 have, and upon Confirmation of the Plan shall be deemed to have, participated in good
 14 faith and in compliance with the applicable provisions of the Bankruptcy Code with
 15 regard to the distributions of the Securities pursuant to the Plan, and therefore are not,
 16 and on account of such distributions shall not be, liable at any time for the violation of
 17 any applicable law, rule, or regulation governing the solicitation of acceptances or
 18 rejections of the Plan or such distributions made pursuant to the Plan.

19 8. Injunction

20 Except as otherwise expressly provided in the Plan or for obligations issued
 21 pursuant to the Plan, all Entities who have held, hold, or may hold Claims against the
 22 Debtors, and all Entities holding Interests, are permanently enjoined, from and after the
 23 Effective Date, from: (1) commencing or continuing in any manner any action or other
 24 proceeding of any kind against the Debtors or Reorganized Debtors on account of or in
 25 connection with or with respect to any such Claims or Interests; (2) enforcing, attaching,
 26 collecting, or recovering by any manner or means any judgment, award, decree or order
 27 against the Debtors or Reorganized Debtors on account of or in connection with or with
 28 respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any
 encumbrance of any kind against the Debtors or Reorganized Debtors or the property or
 estates of the Debtors or Reorganized Debtors on account of or in connection with or with
 respect to any such Claims or Interests; (4) asserting any right of setoff,
 subrogation, or recoupment of any kind against any obligation due from the Debtors or
 Reorganized Debtors or against the property or Estates of the Debtors or Reorganized
 Debtors on account of or in connection with or with respect to any such Claims or
 Interests unless such Holder has Filed a motion requesting the right to perform such
 setoff on or before the Confirmation Date, and notwithstanding an indication in a Proof
 of Claim or Interest or otherwise that such Holder asserts, has, or intends to preserve
 any right of setoff pursuant to section 553 of the Bankruptcy Code or otherwise
 (provided, that, to the extent the Rhodes Entities Claims are Allowed, the Rhodes
 Entities, without the need to file any such motion, shall retain the right to assert a setoff
 against any Claims or Causes of Action that the Reorganized Debtors or Litigation Trust
 may assert against the Rhodes Entities, with the Reorganized Debtors and Litigation
 Trust, as applicable, reserving the right to challenge the propriety of any such attempted

1 setoff, with any such challenge to be resolved by the Bankruptcy Court); and
 2 (5) commencing or continuing in any manner any action or other proceeding of any kind
 3 on account of or in connection with or with respect to any such Claims or
 4 Interests released or settled pursuant to the Plan.

5 9. Protection Against Discriminatory Treatment

6 Consistent with section 525 of the Bankruptcy Code and the Supremacy Clause of the
 7 U.S. Constitution, all Entities, including Governmental Units, shall not discriminate against
 8 the Reorganized Debtors or deny, revoke, suspend, or refuse to renew a license, permit,
 9 charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect
 10 to such a grant against, the Reorganized Debtors, or another Entity with whom such
 11 Reorganized Debtors have been associated, solely because one of the Debtors has been a
 12 debtor under chapter 11, has been insolvent before the commencement of the Chapter 11
 13 Cases (or during the Chapter 11 Cases but before the Debtor is granted or denied a discharge)
 14 or has not paid a debt that is dischargeable in the Chapter 11 Cases.

15 10. Setoffs

16 Except as otherwise expressly provided for in the Plan, each Reorganized Debtor,
 17 pursuant to the Bankruptcy Code (including section 553 of the Bankruptcy Code),
 18 applicable non-bankruptcy law, or as may be agreed to by the Holder of a Claim, may
 19 setoff against any Allowed Claim and the distributions to be made pursuant to the Plan
 20 on account of such Allowed Claim (before any distribution is made on account of such
 21 Allowed Claim), any Claims, rights, and Causes of Action of any nature that such
 22 Debtor, Reorganized Debtor or the Litigation Trust, as applicable, may hold against the
 23 Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action
 24 against such Holder have not been otherwise compromised or settled on or prior to the
 25 Effective Date (whether pursuant to the Plan or otherwise); provided, however, that
 26 neither the failure to effect such a setoff nor the allowance of any Claim pursuant to the
 27 Plan shall constitute a waiver or release by such Reorganized Debtor or the Litigation
 28 Trust of any such Claims, rights, and Causes of Action that such Reorganized Debtor or
 the Litigation Trust may possess against such Holder. In no event shall any Holder of
 Claims be entitled to setoff any Claim against any Claim, right, or Cause of Action of the
 Debtor or Reorganized Debtor, as applicable, unless such Holder has Filed a motion with
 the Bankruptcy Court requesting the authority to perform such setoff on or before the
 Confirmation Date, and notwithstanding any indication in any Proof of Claim or
 otherwise that such Holder asserts, has, or intends to preserve any right of setoff
 pursuant to section 553 or otherwise; provided, however, that, to the extent the Rhodes
 Entities Claims are Allowed, the Rhodes Entities, without the need to file any such
 motion, shall retain the right to assert a setoff against any Claims or Causes of Action
 that the Reorganized Debtors or Litigation Trust may assert against the Rhodes Entities,
 with the Reorganized Debtors and Litigation Trust, as applicable, reserving the right to
 challenge the propriety of any such attempted setoff, with any such challenge to be
 resolved by the Bankruptcy Court).

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1 11. Recoupment

2 In no event shall any Holder of Claims or Interests be entitled to recoup any
 3 Claim or Interest against any Claim, right, or Cause of Action of the Debtors or the
 4 Reorganized Debtors, as applicable, unless such Holder actually has performed such
 5 recoupment and provided notice thereof in writing to the Debtors and the First Lien
 6 Steering Committee on or before the Confirmation Date, notwithstanding any indication
 7 in any Proof of Claim or Interest or otherwise that such Holder asserts, has, or intends to
 8 preserve any right of recoupment.

9 12. Release of Liens

10 Except as otherwise provided in the Plan or in any contract, instrument, release, or
 11 other agreement or document created pursuant to the Plan, on the Effective Date and
 12 concurrently with the applicable distributions made pursuant to the Plan, all mortgages, deeds
 13 of trust, Liens, pledges, or other security interests against any property of the Estates shall be
 14 fully released, and discharged, and all of the right, title, and interest of any Holder of such
 15 mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the
 16 Reorganized Debtors and their successors and assigns. Upon the Effective Date, the
 17 Confirmation Order shall be binding upon and govern the acts of all entities, including,
 18 without limitation, all filing agents, filing officers, title agents, title companies, recorders of
 19 mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental
 20 departments, secretaries of state, federal and local officials, and all other persons and entities
 21 who may be required by operation of law, the duties of their office, or contract, to release any
 22 mortgages, deeds of trust, Liens, pledges or other security interests against any property of the
 23 Estates; and each of the foregoing persons and entities is hereby directed to accept for filing
 24 the Confirmation Order any and all of the documents and instruments necessary and
 25 appropriate to effectuate the discharge.

26 13. Document Retention

27 On and after the Effective Date, the Reorganized Debtors may maintain documents in
 28 accordance with their current document retention policy, as may be altered, amended,
 29 modified, or supplemented by the Reorganized Debtors in the ordinary course of business.
 30 Copies of all Debtors' books and records shall be delivered to the Rhodes Entities at no cost to
 31 the Rhodes Entities on or prior to the Effective Date.

32 14. Reimbursement or Contribution

33 If the Bankruptcy Court disallows a Claim for reimbursement or contribution of an
 34 Entity pursuant to section 502(e)(1)(B) of the Bankruptcy Code, then to the extent that such
 35 Claim is contingent as of the time of allowance or disallowance, such Claim shall be forever
 36 disallowed notwithstanding section 502(j) of the Bankruptcy Code, unless prior to the
 37 Effective Date: (1) such Claim has been adjudicated as noncontingent or (2) the relevant
 38 Holder of a Claim has Filed a noncontingent Proof of Claim on account of such Claim and a
 39 Final Order has been entered determining such Claim as no longer contingent.

1 K. Allowance and Payment of Certain Administrative Claims

2 1. Professional Claims

3 a. Final Fee Applications

4 All final requests for payment of Claims of a Professional shall be Filed no later than
 5 forty-five days after the Effective Date. After notice and a hearing in accordance with the
 6 procedures established by the Bankruptcy Code and prior Bankruptcy Court orders, the
 Allowed amounts of such Professional Claims shall be determined by the Bankruptcy Court.

7 b. Payment of Interim Amounts

8 Except as otherwise provided in the Plan, Professionals shall be paid pursuant to the
 9 Interim Compensation Order.

10 c. Reimbursable Expenses

11 The reasonable fees and expenses incurred by (i) the First Lien Agent, including its
 12 professionals, to the extent provided by the First Lien Credit Agreement, (ii) the Second Lien
 13 Agent, including its professionals, to the extent provided by the Second Lien Credit
 14 Agreement (only to the extent the Class of Second Lien Lender Secured Claims votes in favor
 15 of the Plan, and (iii) the First Lien Steering Committee, including its professionals, in
 connection with the Chapter 11 Cases shall be paid by the Debtors or Reorganized Debtors, as
 applicable, within 15 days of receipt of an invoice from such parties or their advisors.

16 d. Post-Effective Date Fees and Expenses

17 Except as otherwise specifically provided in the Plan, from and after the Effective
 18 Date, the Reorganized Debtors shall, in the ordinary course of business and without any
 further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the
 reasonable legal, professional, or other fees and expenses related to implementation and
 Consummation incurred by the Reorganized Debtors and First Lien Steering Committee.
 Upon the Effective Date, any requirement that Professionals comply with sections 327
 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for
 services rendered after such date shall terminate, and the Reorganized Debtors may employ
 and pay any Professional in the ordinary course of business without any further notice to or
 action, order, or approval of the Bankruptcy Court.

18 e. Substantial Contribution Compensation and Expenses

25 Except as otherwise specifically provided in the Plan, any Entity who requests
 26 compensation or expense reimbursement for making a substantial contribution in the Chapter
 27 11 Cases pursuant to sections 503(b)(3), (4), and (5) of the Bankruptcy Code must File an
 application and serve such application on counsel for the Debtors or Reorganized Debtors, as
 applicable, and the First Lien Steering Committee and the Creditors' Committee, and as
 otherwise required by the Bankruptcy Court and the Bankruptcy Code on or before the

1 Administrative Claim Bar Date or be forever barred from seeking such compensation or
 2 expense reimbursement.

3 2. Other Administrative Claims

4 All requests for payment of an Administrative Claim must be Filed with the Claims
 5 and Solicitation Agent and served upon counsel to the Debtors or Reorganized Debtors, as
 6 applicable, and the First Lien Steering Committee on or before the Administrative Claim Bar
 7 Date. Any request for payment of an Administrative Claim that is not timely Filed and served
 8 shall be disallowed automatically without the need for any objection by the Debtors,
 9 Reorganized Debtors, or the First Lien Steering Committee. The Reorganized Debtors may
 10 settle and pay any Administrative Claim in the ordinary course of business without any further
 11 notice to or action, order, or approval of the Bankruptcy Court. In the event that any party
 12 with standing objects to an Administrative Claim, the Bankruptcy Court shall determine the
 13 Allowed amount of such Administrative Claim. Notwithstanding the foregoing, no request for
 14 payment of an Administrative Claim need be Filed with respect to an Administrative Claim
 15 previously Allowed by Final Order.

16 1. Conditions Precedent to Confirmation and Consummation of the Plan

17 1. Conditions to Confirmation

18 The following are conditions precedent to Confirmation that must be satisfied or
 19 waived in accordance with Article X.C of the Plan:

- 20 A. The Bankruptcy Court shall have approved the Disclosure Statement, in
 21 a manner acceptable to the Plan Proponent, as containing adequate
 22 information with respect to the Plan within the meaning of section 1125
 23 of the Bankruptcy Code.
- 24 B. The Confirmation Order shall be in form and substance acceptable to
 25 the Plan Proponent.
- 26 C. The terms and conditions of employment or retention of any Persons
 27 proposed to serve as officers or directors of Newco, including, without
 28 limitation, as to compensation, shall be acceptable to the Plan
 Proponent and shall be disclosed at or prior to the Confirmation
 Hearing.
- 29 D. Any disclosures made pursuant to 11 U.S.C. § 1129(a)(5) shall be
 30 acceptable to the Plan Proponent.
- 31 E. All of the schedules, documents, and exhibits ancillary to the Plan and
 32 Disclosure Statement including, but not limited to, (i) the Claim
 33 Purchase Schedule, (ii) the Litigation Trust Agreement, (iii) the Newco
 34 LLC Operating Agreement, (iv) the New First Lien Notes credit
 35 agreement, (v) the Schedule of Causes of Action, (vi) the Asset and
 36 Stock Transfer Agreement, and (vii) the Schedule of Assumed

Executory Contracts and Unexpired Leases shall be in form and substance acceptable to the Plan Proponent.

2. Conditions Precedent to the Effective Date

The following are conditions precedent to Consummation that must be satisfied or waived in accordance with Article X.C of the Plan:

- A. The Bankruptcy Court shall have authorized the assumption and rejection of executory contracts and unexpired leases by the Debtors as contemplated by Article V of the Plan.
- B. All of the schedules, documents, and exhibits ancillary to the Plan and Disclosure Statement including, but not limited to, (i) the Claim Purchase Schedule, (ii) the Litigation Trust Agreement, (iii) the Newco LLC Operating Agreement, (iv) the New First Lien Notes credit agreement, (v) the Schedule of Causes of Action, (vi) the Asset and Stock Transfer Agreement, and (vii) the Schedule of Assumed Executory Contracts and Unexpired Leases shall be in form and substance acceptable to the Plan Proponent.
- C. The Confirmation Order shall have become a Final Order in form and substance acceptable to the Plan Proponent.
- D. The documents governing the New First Lien Notes and the Newco LLC Operating Agreement shall be in form and substance acceptable to the Plan Proponent.
- E. The Confirmation Date shall have occurred.
- F. The First Lien Steering Committee shall have designated and replaced each existing Qualified Employee of the Debtors with a new Qualified Employee for the Reorganized Debtors.
- G. The third party debt outstanding on the Rhodes Ranch Golf Course shall be refinanced on terms and conditions acceptable to Rhodes and the First Lien Steering Committee and the personal loan of James Rhodes to the entity that owns the Rhodes Ranch Golf Course shall have been contributed as equity without any new equity being issued to James Rhodes and James Rhodes shall have provided the Debtors, the Reorganized Debtors, Newco and the entity that owns the Rhodes Ranch Golf Course an indemnity for any liability arising from the contribution of such loan.
- H. Copies of all Debtors' books and records shall have been delivered to the Rhodes Entities at no cost to the Rhodes Entities.

1 I. The Arizona Assets shall have been transferred to the Rhodes Entities
 2 (or their designee) free and clear of all liens and claims pursuant to
 3 section 363(f) of the Bankruptcy Code on the Effective Date; provided,
 4 that the non-First Lien Lender/Second Lien Lender liens do not exceed
 5 \$60,000.

6 J. The Debtors shall have assumed and assigned all executory contracts
 7 and unexpired leases related solely to the Arizona Assets to the Rhodes
 8 Entities (or their designee), at no cost to the Debtors or the Reorganized
 9 Debtors, with all Cure costs associated therewith to be borne by the
 10 Rhodes Entities.

11 K. The tax structure set forth in Article IV.F of the Plan shall be
 12 implemented.

13 L. The Rhodes Entities and First Lien Steering Committee shall have
 14 agreed on the Golf Course Security Property.

15 M. The Rhodes Entities shall have performed all of their obligations under
 16 the Plan including, without limitation, depositing \$3.5 million in Cash
 17 in an account designated by the Debtors, with the consent of the First
 18 Lien Steering Committee, and transferred the Rhodes Ranch Golf
 19 Course and related contracts and assets as required by Article IV.S. of
 20 the Plan to the Reorganized Debtors.

16 3. Waiver of Conditions Precedent

17 The First Lien Steering Committee may waive any of the conditions to the Effective
 18 Date at any time, without any notice to parties in interest and without any further notice to or
 19 action, order, or approval of the Bankruptcy Court, and without any formal action other than
 20 proceeding to confirm or consummate the Plan; provided, that the First Lien Steering
 21 Committee will not waive the conditions precedent in items X.B.6 through 12 of the Plan if
 22 the Rhodes Entities shall have complied with all of their obligations hereunder and in the Plan
 23 by the Effective Date (or such earlier date specifically set forth herein). In the event the
 24 Rhodes Entities fail to comply with any of their obligations under the Mediation Term Sheet
 25 or under the Plan by the Effective Date (or such earlier date specifically set forth herein) and
 26 fail to cure such alleged breach within ten (10) days' written notice to the Rhodes Entities,
 27 then the First Lien Steering Committee shall be entitled to file a motion on at least seven (7)
 28 days notice to (i) determine that a breach has occurred (except that the failure of the parties to
 agree on the refinancing of the Rhodes Ranch Golf Course solely as a result of the First Lien
 Steering Committee acting unreasonably or in bad faith shall not be deemed a failure of the
 Rhodes Entities to comply with their obligations hereunder or under the Plan), and the Rhodes
 Entities reserve their right to object to such motion; (ii) modify the Plan to remove any
 provisions hereof that were included for the benefit of the Rhodes Entities; and (iii)
 consummate the Plan, as modified. Upon entry of an order of the Bankruptcy Court finding a
 breach by the Rhodes Entities and authorizing the modifications to the Plan to remove any

provisions that were included for the benefit of the Rhodes Entities, the First Lien Steering shall be authorized to make such modifications and consummate the Plan.

4. Effect of Non-Occurrence of Conditions to Consummation

Each of the conditions to Consummation must be satisfied or duly waived pursuant to Article X.C. of the Plan, and Consummation must occur within 180 days of Confirmation, or by such later date established by Bankruptcy Court order. If Consummation has not occurred within 180 days of Confirmation, then upon motion by a party in interest made before Consummation and a hearing, the Confirmation Order may be vacated by the Bankruptcy Court; provided, however, that notwithstanding the Filing of such motion to vacate, the Confirmation Order may not be vacated if Consummation occurs before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to Article X.D of the Plan or otherwise, then except as provided in any order of the Bankruptcy Court vacating the Confirmation Order, the Plan will be null and void in all respects, including the discharge of Claims and termination of Interests pursuant to the Plan and section 1141 of the Bankruptcy Code and the assumptions, assignments, or rejections of executory contracts or unexpired leases pursuant to Article V of the Plan, and nothing contained in the Plan or Disclosure Statement shall: (1) constitute a waiver or release of any Claims, Interests, or Causes of Action; (2) prejudice in any manner the rights of the Debtors, the First Lien Steering Committee or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking of any sort by the Debtors, the First Lien Steering Committee or any other Entity.

5. Satisfaction of Conditions Precedent to Confirmation

Upon entry of a Confirmation Order acceptable to the Plan Proponent, each of the conditions precedent to Confirmation, as set forth in Article X.A of the Plan, shall be deemed to have been satisfied or waived in accordance with the Plan.

M. Modification, Revocation, Or Withdrawal of the Plan

1. Modification and Amendments

The Plan Proponent shall not modify materially the terms of the Plan without the prior consent of the parties to the Mediation Term Sheet; provided, that in the event the Rhodes Entities fail to comply with any of their obligations under the Mediation Term Sheet and under the Plan by the Effective Date (or such other date set forth in the Plan) and fail to cure such alleged breach within ten (10) days' written notice to the Rhodes Entities, then the First Lien Steering Committee shall be entitled to file a motion on at least seven (7) days notice to (i) determine that a breach has occurred (except that the failure of the parties to agree on the refinancing of the Rhodes Ranch Golf Course solely as a result of the First Lien Steering Committee acting unreasonably or in bad faith shall not be deemed a failure of the Rhodes Entities to comply with their obligations hereunder or under the Plan), and the Rhodes Entities reserve their right to object to such motion; (ii) modify the Plan to remove any provisions hereof that were included for the benefit of the Rhodes Entities; and (iii) consummate the Plan, as modified. Upon entry of an order of the Bankruptcy Court finding a breach by the

1 Rhodes Entities and authorizing the modifications to the Plan to remove any provisions that
 2 were included for the benefit of the Rhodes Entities, the First Lien Steering shall be
 3 authorized to make such modifications and consummate the Plan. Except as otherwise
 4 specifically provided in the Plan, the Plan Proponent reserves the right to modify the Plan and
 5 seek Confirmation consistent with the Bankruptcy Code. Subject to certain restrictions and
 6 requirements set forth in section 1127 of the Bankruptcy Code and Bankruptcy Rule 3019 and
 7 those restrictions on modifications set forth in the Plan, the Plan Proponent expressly reserves
 8 its rights to revoke, withdraw, alter, amend, or modify materially the Plan with respect to any
 9 Debtor, one or more times, after Confirmation, and, to the extent necessary, may initiate
 10 proceedings in the Bankruptcy Court to so alter, amend, or modify the Plan, or remedy any
 11 defect or omission, or reconcile any inconsistencies in the Plan, the Disclosure Statement, or
 12 the Confirmation Order, in such matters as may be necessary to carry out the purposes and
 13 intent of the Plan. Any such modification or supplement shall be considered a modification of
 14 the Plan and shall be made in accordance with Article XI.A of the Plan. The Plan, Disclosure
 15 Statement and all ancillary documents may be inspected in the office of the clerk of the
 16 Bankruptcy Court or its designee during normal business hours, at the Bankruptcy Court's
 17 website at <http://www.nvb.uscourts.gov>. All documents to be entered into in connection with
 18 the consummation of the Plan as described in the Plan and/or Disclosure Statement are
 19 integral to the Plan and shall be approved by the Bankruptcy Court pursuant to the
 20 Confirmation Order.

2. Effect of Confirmation on Modifications

3. Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

4. Revocation or Withdrawal of Plan

5. The Plan Proponent reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of reorganization; provided, that, any subsequently filed plan shall be consistent with the Mediation Settlement unless the Rhodes Entities fail to comply with any of their obligations under the Mediation Term Sheet or the Plan by the Effective Date (or such other date set forth herein) and fail to cure such alleged breach within ten (10) days' written notice to the Rhodes Entities, in which case the First Lien Steering Committee shall be entitled to file a motion on at least seven (7) days notice to (i) determine that a breach has occurred (except that the failure of the parties to agree on the refinancing of the Rhodes Ranch Golf Course solely as a result of the First Lien Steering Committee acting unreasonably or in bad faith shall not be deemed a failure of the Rhodes Entities to comply with their obligations hereunder or under the Plan), and the Rhodes Entities reserve their right to object to such motion; (ii) revoke or withdraw the Plan as a result of such breach; and (iii) file a subsequent plan that removes the benefits provided to the Rhodes Entities pursuant to the Mediation Term Sheet. If the Plan Proponent revokes or withdraws the Plan, or if Confirmation or Consummation does not occur, then: (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain of any Claim or Class of Claims), assumption or rejection of executory contracts or unexpired leases effected by the Plan, and any document or

agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall: (a) constitute a waiver or release of any Claims or Interests; (b) prejudice in any manner the rights of the Plan Proponent or any other Entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Plan Proponent or any other Entity.

N. Retention of Jurisdiction

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or related to, the Chapter 11 Cases and the Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code and as otherwise set forth in the Plan.

Article V.
STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN

The following is a brief summary of the Plan Confirmation process. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and to consult their own attorneys.

A. The Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on Confirmation (the "Confirmation Hearing"). Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation.

THE BANKRUPTCY COURT HAS SCHEDULED THE CONFIRMATION HEARING TO COMMENCE ON JANUARY 14, 2010 AT 9:00 A.M. PREVAILING PACIFIC TIME BEFORE THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA, IN COURTROOM 1 IN THE FOLEY FEDERAL BUILDING LOCATED AT 300 LAS VEGAS BOULEVARD SOUTH, LAS VEGAS, NEVADA 89101. THE CONFIRMATION HEARING MAY BE ADJOURNED FROM TIME TO TIME BY THE BANKRUPTCY COURT WITHOUT FURTHER NOTICE EXCEPT FOR AN ANNOUNCEMENT OF THE ADJOURNED DATE MADE AT THE CONFIRMATION HEARING OR ANY ADJOURNMENT THEREOF.

OBJECTIONS TO CONFIRMATION OF THE PLAN MUST BE FILED AND SERVED ON OR BEFORE JANUARY 4, 2010, IN ACCORDANCE WITH THE SOLICITATION PROCEDURES ORDER FILED AND SERVED ON HOLDERS OF CLAIMS AND INTERESTS AND OTHER PARTIES IN INTEREST. UNLESS OBJECTIONS TO CONFIRMATION ARE TIMELY SERVED AND FILED IN COMPLIANCE WITH THE SOLICITATION PROCEDURES ORDER, THEY MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT.

1 B. Confirmation Standards

2 To confirm the Plan, the Bankruptcy Court must find, among other things, that the
 3 requirements of section 1129 of the Bankruptcy Code have been satisfied. The requirements
 4 of section 1129 of the Bankruptcy Code are listed below:

- 5 1. the Plan complies with the applicable provisions of the Bankruptcy Code;
- 6 2. the First Lien Steering Committee, as Plan Proponent, will have complied with
 the applicable provisions of the Bankruptcy Code;
- 7 3. the Plan has been proposed in good faith and not by any means forbidden by
 law;
- 8 4. any payment made or promised under the Plan for services or for costs and
 expenses in, or in connection with, the Chapter 11 Cases, or in connection with
 the Plan and incident to the cases, has been disclosed to the Bankruptcy Court,
 and any such payment made before the Confirmation is reasonable, or if such
 payment is to be fixed after the Confirmation, such payment is subject to the
 approval of the Bankruptcy Court as reasonable;
- 9 5. with respect to each Class of Impaired Claims or Interests, either each Holder
 of a Claim or Interest of such Class has accepted the Plan or will receive or
 retain under the Plan on account of such Claim or Interest property of a value,
 as of the Effective Date of the Plan, that is not less than the amount that such
 Holder would receive or retain if the Debtors were liquidated on such date
 under chapter 7 of the Bankruptcy Code;
- 10 6. each Class of Claims that is entitled to vote on the Plan either has accepted the
 Plan or is not Impaired under the Plan, or the Plan can be confirmed without
 the approval of each voting Class pursuant to section 1129(b) of the
 Bankruptcy Code;
- 11 7. except to the extent that the Holder of a particular Claim will agree to a
 different treatment of such Claim, the Plan provides that Allowed
 Administrative and Allowed Priority Non-Tax Claims will be paid in full on
 the Effective Date, or as soon as reasonably practicable thereafter;
- 12 8. at least one Class of Impaired Claims or Interests will accept the Plan,
 determined without including any acceptance of the Plan by any insider
 holding a Claim or Interest of such Class;
- 13 9. Confirmation is not likely to be followed by the liquidation, or the need for
 further financial reorganization, of the Debtors or any successor to the Debtors
 under the Plan, unless such liquidation or reorganization is proposed in the
 Plan;
- 14 10. all fees of the type described in 28 U.S.C. § 1930, including the fees of the
 United States Trustee, will be paid as of the Effective Date; and
- 15 11. the Plan addresses payment of retiree benefits, if any, in accordance with
 section 1114 of the Bankruptcy Code.

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1 The First Lien Steering Committee believes that the Plan satisfies the requirements of
 2 section 1129 of the Bankruptcy Code, including that (1) the Plan satisfies or will satisfy all of
 3 the statutory requirements of chapter 11 of the Bankruptcy Code, (2) the First Lien Steering
 4 Committee has complied or will have complied with all of the requirements of chapter 11 and
 5 (3) the Plan has been proposed in good faith.

6 C. Financial Feasibility

7 Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find,
 8 as a condition to Confirmation, that Confirmation is not likely to be followed by the
 9 liquidation of the Debtors, unless such liquidation is proposed in the Plan, or the need for
 further financial reorganization. To determine whether the Plan meets this requirement, the
 First Lien Steering Committee has analyzed the ability of the Debtors to meet their obligations
 under the Plan.

10 With respect to the Reorganized Debtors, based on the analyses set forth in
 11 Exhibit D to the Disclosure Statement and the operational, business and other
 12 assumptions set forth therein, the First Lien Steering Committee believes that the
 13 Reorganized Debtors will have the financial capability to satisfy their obligations
 14 following the Effective Date pursuant to the Plan, including the payment of all Cash
 distributions contemplated by the Plan. Based on the analysis and related information set
 forth in Exhibit D to the Disclosure Statement, the First Lien Steering Committee will seek a
 ruling that the Plan is feasible in connection with the Confirmation of the Plan.

15 D. Best Interests of Creditors Test

16 Often called the "best interests" test, section 1129(a)(7) of the Bankruptcy Code
 17 requires that the Bankruptcy Court find, as a condition to Confirmation, that each Holder of a
 18 Claim or Interest in each Impaired Class: (1) has accepted the Plan or (2) will receive or
 19 retain under the Plan property of a value, as of the Effective Date, that is not less than the
 amount that such Person would receive if the Debtors were liquidated under chapter 7 of the
 20 Bankruptcy Code. To make these findings, the Bankruptcy Court must: (a) estimate the Cash
 21 proceeds (the "Liquidation Proceeds") that a chapter 7 trustee would generate if each Chapter
 22 Case were converted to a chapter 7 case and the assets of such Estate were liquidated; (b)
 23 determine the distribution ("Liquidation Distribution") that each non-accepting Holder of a
 Claim or Interest would receive from the Liquidation Proceeds under the priority scheme
 dictated in chapter 7; and (c) compare each Holder's Liquidation Distribution to the
 distribution under the Plan ("Plan Distribution") that such Holder would receive if the Plan
 were Confirmed and consummated.

24 To assist the Bankruptcy Court in making the findings required under section
 25 1129(a)(7), the First Lien Steering Committee, through its financial advisor, Winchester
 26 Carlisle Partners ("WCP"), and its valuation consultant, Robert Charles Lesser & Co,
 27 ("RCLCO"), has prepared a liquidation analysis (the "Liquidation Analysis") and a going
 concern analysis (the "Going Concern Analysis"). The Liquidation Analysis and Going
 Concern Analysis compare the proceeds to be realized if the Debtors were to be liquidated in
 hypothetical cases under chapter 7 of the Bankruptcy Code against the proceeds to be realized

1 under the Plan as a going concern. These analyses employ a discounted cash flow ("DCF")
 2 methodology to arrive at a range of values for the Debtors' real estate assets as of December
 3 31, 2009, and incorporate various estimates and assumptions, including a hypothetical
 4 conversion to chapter 7 liquidation as of January 1, 2010. Further, each analysis is subject to
 5 potential material changes including with respect to economic and business conditions and
 6 legal rulings. Therefore, the actual liquidation and going concern values of the Debtors could
 7 vary materially from the estimates provided in the Liquidation and Going Concern Analyses,
 8 respectively.

9 1. Liquidation Analysis

10 Under chapter 7 liquidation, certain distinctive factors would limit recovery from the
 11 sale of the Debtors' homebuilding operations and other land assets. RCLCO and WCP
 12 assumed that an orderly liquidation would be performed over a period of twelve months
 13 commencing as of January 1, 2010, the projected date of conversion to a hypothetical chapter
 14 7 liquidation. Given the current depressed state of homebuliding and real estate markets, as
 15 well as the limited availability of credit, this expedited sale process could materially reduce
 16 recovery from the Debtors' land assets. In addition, RCLCO and WCP assumed that a
 17 potential buyer of the Debtors' assets will expect a higher risk premium and lower achievable
 18 home sale prices relative to a going concern valuation due to the stigma attached to a
 19 community and/or company that is in a liquidation mode.

20 The Liquidation Analysis, attached hereto as Exhibit E, presents both "High" and
 21 "Low" estimates of the value of the Debtors' real estate assets under liquidation, representing
 22 a range of assumptions relating to the risk and costs incurred during a liquidation. The DCF
 23 analysis derives an estimated value of the Debtors' real estate assets by discounting the
 24 unlevered projected free cash flows a buyer or buyers of the Debtors' assets could expect to
 25 achieve, based on market projections, to a net present value as of the effective date. RCLCO
 26 used a discount rate range of 25% - 30% in the Liquidation Analysis, reflecting the higher risk
 27 premium required by investors under this scenario.

28 Based on the methodologies described above, and after further review, discussions,
 29 considerations, and assumptions, RCLCO and WCP estimate that the liquidation value of the
 30 Debtors' real estate assets as of January 1, 2010, ranges from \$44.2 million dollars to \$55.0
 31 million dollars, with a midpoint of \$49.3 million dollars.

32 As reflected on Exhibit E hereto, RCLCO and WCP performed the Liquidation
 33 Analysis on a consolidated basis and did not provide a liquidation value for each individual
 34 Debtor entity. The first lien indebtedness and second lien indebtedness total nearly \$400
 35 million, which indebtedness is secured by first and second liens, respectively, on substantially
 36 all of the Debtors' assets at each Debtor entity. Given that the Liquidation Analysis reflects a
 37 midpoint value of \$49.3 million, the First Lien Steering Committee believes that there is no
 38 value available for claims beyond the first lien indebtedness at any Debtor entity on either a
 39 liquidation or going concern basis. The First Lien Steering Committee therefore does not
 40 believe that an entity by entity liquidation analysis is necessary or appropriate on the facts of
 41 these Chapter 11 Cases.

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1 2. Going Concern Analysis

2 In preparing the Going Concern Analysis, RCLCO and WCP, among other things:
 3 reviewed certain internal financial and operating data of the Debtors made available by the
 4 Debtors and WCP; reviewed certain operating and financial forecasts; performed DCF
 5 analyses; considered sales transaction for properties comparable to certain of the Debtors'
 6 assets; considered information from qualified third party sources relating to revenue and cost
 7 assumptions, and conducted such other analyses as deemed necessary to complete the
 8 analysis.

9 The Going Concern Analysis assumes that various documents and data provided by
 10 the Debtors, including cost information, are reliable and accurate.
 11

12 In addition to the foregoing, RCLCO assumed in preparing the Going Concern
 13 Analysis that the Effective Date occurs on January 1, 2010. The Projections used also assume
 14 that general economic, financial, and market conditions as of the Effective Date will not differ
 15 materially from those conditions prevailing as of the date of the Going Concern Analysis.
 16 Although subsequent developments may affect the conclusions, neither RCLCO, WCP nor the
 17 First Lien Steering Committee have any obligation to update, revise, or reaffirm its analysis
 18 following the Confirmation Hearing.
 19

20 The DCF methodology was used to arrive at a value for the Debtors' real estate assets.
 21 The DCF analysis derives an estimated value of the Debtors' real estate assets by discounting
 22 their unlevered projected free cash flows based on market projections to a net present value as
 23 of the Effective Date. Revenue is derived from the construction and sale of single family
 24 homes on all single-family lots currently in inventory, as well as on certain multifamily and
 25 commercial parcels where it was determined that single-family homes were the highest and
 26 best use. Pricing and sales velocity for these homes were projected to recover from their
 27 currently depressed levels, as determined by an analysis of recent and historical sales data, to
 28 more sustainable level of growth by 2011. Additional revenue is derived from the sale of
 29 certain land parcels at prices and dates supportable by market conditions, as well as the
 30 operation and sale of the Tuscany Golf Course. RCLCO used a discount rate range of 20% -
 31 25% in the Going Concern Analysis, reflecting the prevailing capital market requirements of
 32 similar transactions.
 33

34 Based on the methodologies described above, and after further review, discussions,
 35 considerations, and assumptions, RCLCO and WCP have estimated that the going concern
 36 value of the Debtors' real estate assets as of January 1, 2010, ranges from \$89.2 million to
 37 \$111.5 million, with a midpoint of \$99.6 million.
 38

39 E. Acceptance by Impaired Classes
 40

41 The Bankruptcy Code also requires, as a condition to confirmation, that each class of
 42 claims or interests that is impaired under a plan accept the plan, with the exception described
 43 in the following section. A class that is not "impaired" under a plan of reorganization is
 44 deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to
 45 such class is not required. A class is "impaired" unless the plan (1) leaves unaltered the legal,
 46

1 equitable and contractual rights to which the claim or interest entitles the holder of such claim
 2 or interest or (2) cures any default and reinstates the original terms of the obligation.

3 Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of
 4 impaired claims as acceptance by holders of at least two thirds in dollar amount and more than
 5 one half in number of claims in that class, but for that purpose counts only those who actually
 6 vote to accept or to reject the plan. Thus, a class of claims will have voted to accept the plan
 7 only if two thirds in amount and a majority in number actually voting cast their ballots in
 favor of acceptance. Under section 1126(d) of the Bankruptcy Code, a class of interests has
 accepted the plan if holders of such interests holding at least two thirds in amount actually
 voting have voted to accept the plan.

8 F. Confirmation Without Acceptance by All Impaired Classes

9 Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan,
 10 even if such plan has not been accepted by all impaired classes entitled to vote on such plan;
provided that such plan has been accepted by at least one impaired class.

11 Section 1129(b) of the Bankruptcy Code states that notwithstanding the failure of an
 12 impaired class to accept a plan of reorganization, the plan will be confirmed, on request of the
 proponent of the plan, in a procedure commonly known as "cram down," so long as the plan
 13 does not "discriminate unfairly" and is "fair and equitable" with respect to each class of
 14 claims or interests that is impaired under, and has not accepted, the plan.

15 In general, a plan does not discriminate unfairly if it provides a treatment to the class
 16 that is substantially equivalent to the treatment that is provided to other classes that have equal
 rank. In determining whether a plan discriminates unfairly, courts will take into account a
 17 number of factors. Accordingly, two classes of unsecured claims could be treated differently
 without unfairly discriminating against either class.

18 The condition that a plan be "fair and equitable" with respect to a non-accepting class
 19 of secured claims includes the requirements that: (1) the holders of such secured claims retain
 the liens securing such claims to the extent of the allowed amount of the secured claims,
 20 whether the property subject to the liens is retained by the debtor or transferred to another
 entity under the plan and (2) each holder of a secured claim in the class receives deferred cash
 21 payments totaling at least the allowed amount of such claim with a present value, as of the
 effective date of the plan, at least equivalent to the value of the secured claimant's interest in
 22 the debtor's property subject to the liens.

23 The condition that a plan be "fair and equitable" with respect to a non-accepting class
 24 of unsecured claims includes the requirement that either: (1) the plan provides that each
 holder of a claim of such class receive or retain on account of such claim property of a value,
 25 as of the Effective Date, equal to the allowed amount of such claim; or (2) the holder of any
 claim or interest that is junior to the claims of such class will not receive or retain any
 26 property under the plan on account of such junior claim or interest.

27 The condition that a plan be "fair and equitable" with respect to a non-accepting class
 28 of interests includes the requirements that either: (1) the plan provide that each holder of an

interest in such class receive or retain under the plan, on account of such interest, property of a value, as of the effective date of the plan, equal to the greater of (a) the allowed amount of any fixed liquidation preference to which such holder is entitled, (b) any fixed redemption price to which such holder is entitled or (c) the value of such interest; or (2) if the class does not receive such an amount as required under (1), no class of interests junior to the non-accepting class may receive a distribution under the plan.

The First Lien Steering Committee shall seek Confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code with respect to any Impaired Class, as applicable, presumed to reject the Plan, and the First Lien Steering Committee reserves the right to do so with respect to any other rejecting Class of Claims or Interests, as applicable, or to modify the Plan. Section 1129(a)(10) of the Bankruptcy Code shall be satisfied for purposes of Confirmation by acceptance of the Plan by at least one Class that is Impaired under the Plan.

The First Lien Steering Committee submits that if the First Lien Steering Committee "crams down" the Plan pursuant to section 1129(b) of the Bankruptcy Code, the Plan will be structured such that it does not "discriminate unfairly" and satisfies the "fair and equitable" requirement. With respect to the unfair discrimination requirement, all Classes under the Plan are provided treatment that is substantially equivalent to the treatment that is provided to other Classes that have equal rank. If the First Lien Steering Committee seeks to "cram down" the Plan on Holders of Secured Claims, all such Holders shall receive a distribution that satisfies the fair and equitable requirement. The Plan also satisfies the fair and equitable requirement with respect to Holders of Unsecured Claims because even though such Holders will not receive payment in full on account of the Allowed amount of their Claims, no junior Claim or Interest receives any distribution under the Plan. Holders of Interests will receive no distribution under the Plan, but there is no junior Claim or Interest that will receive any distribution under the Plan either. Therefore, the requirements of section 1129(b) of the Bankruptcy Code would be satisfied in the event that the First Lien Steering Committee is required to "cram down."

Article VI.
CERTAIN FACTORS TO BE CONSIDERED PRIOR TO VOTING

HOLDERS OF CLAIMS ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CONSIDER CAREFULLY THE FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THE DISCLOSURE STATEMENT AND RELATED DOCUMENTS, REFERRED TO OR INCORPORATED BY REFERENCE IN THE DISCLOSURE STATEMENT, PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THIS ARTICLE PROVIDES INFORMATION REGARDING POTENTIAL RISKS IN CONNECTION WITH THE PLAN AND THE FINANCIAL PROJECTIONS INCLUDED AS EXHIBITS D AND E TO THE DISCLOSURE STATEMENT. THESE FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION.

1 A. Certain Bankruptcy Considerations

2 1. The First Lien Steering Committee May Not Be Able to Obtain Confirmation
 3 of the Plan.

4 The First Lien Steering Committee cannot ensure that they will receive the requisite
 5 acceptances to confirm the Plan. Even if the First Lien Steering Committee receives the
 6 requisite acceptances, the First Lien Steering Committee cannot ensure that the Bankruptcy
 7 Court will confirm the Plan. A non-accepting Holder of Claims and Interests might challenge
 8 the adequacy of the Disclosure Statement or the balloting procedures and results as not being
 9 in compliance with the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court
 determined that the Disclosure Statement and the balloting procedures and results were
 appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of
 the statutory requirements for Confirmation had not been met, including that the terms of the
 Plan are fair and equitable to non-accepting Classes.

10 As discussed in further detail in Article V herein, section 1129 of the Bankruptcy Code
 11 sets forth the requirements for confirmation and requires, among other things: (a) a finding by
 12 the Bankruptcy Court that the plan "does not unfairly discriminate" and is "fair and equitable"
 13 with respect to any non-accepting classes; (b) confirmation of the plan is not likely to be
 14 followed by a liquidation or a need for further financial reorganization; and (c) the value of
 15 distributions to non-accepting holders of claims and interests within a particular class under
 16 the plan will not be less than the value of distributions such holders would receive if the
 debtors were liquidated under chapter 7 of the Bankruptcy Code. While there can be no
 assurance that these requirements will be met, the First Lien Steering Committee believes that
 the Plan complies with section 1129 of the Bankruptcy Code.

17 Confirmation and Consummation also are subject to certain conditions described in
 18 Article V herein. If the Plan is not confirmed, it is unclear what distributions Holders of
 19 Claims or Interests ultimately would receive and it is possible that an alternative plan would
 result in substantially less favorable treatment for Holders of Claims or Interests than such
 Holders would receive under the Plan.

20 2. The Bankruptcy Court May Not Approve the Compromise and Settlement
 21 Contemplated By the Plan

22 As described in more detail in Article IV.J.3 herein, the Plan constitutes a
 23 settlement, compromise and release of rights arising from or relating to the allowance,
 24 classification and treatment of all Allowed Claims and Allowed Interests and their respect
 25 distributions and treatments under the Plan and takes into account, and conforms to, the
 26 relative priority and rights of the Claims and Interests in each Class in connection with any
 27 contractual, legal and equitable subordination rights relating thereto whether arising under
 general principles of equitable subordination or section 510(b) or (c) of the Bankruptcy Code.
 This settlement, compromise and release requires approval by the Bankruptcy Court in the
 Confirmation Order. The First Lien Steering Committee cannot ensure that the Bankruptcy
 Court will approve the settlement described in Article VIII.C. of the Plan.

1 3. Parties in Interest May Object to the First Lien Steering Committee's
 2 Classification of Claims

3 Section 1122 of the Bankruptcy Code provides that a chapter 11 plan may classify a
 4 claim or an interest in a particular class only if such claim or interest is substantially similar to
 5 the other claims or interests in such class. The First Lien Steering Committee believes that the
 6 classification of Claims and Interests under the Plan complies with the requirements set forth
 7 in the Bankruptcy Code. However, there is no assurance that the Bankruptcy Court will hold
 8 that the Plan's classification of Claims and Interests complies with the Bankruptcy Code.

9 4. Failure to Satisfy Vote Requirement

10 If votes are received in number and amount sufficient to enable the Bankruptcy Court
 11 to confirm the Plan, the First Lien Steering Committee intends to seek Confirmation as
 12 promptly as practicable thereafter. In the event that sufficient votes are not received, the First
 13 Lien Steering Committee may propose an alternative chapter 11 plan. There can be no
 14 assurance that the terms of any such alternative chapter 11 plan would be similar to or as
 15 favorable to the Holders of Allowed Claims as those proposed in the Plan.

16 5. The First Lien Steering Committee, the Debtors or the Reorganized Debtors
 17 May Object to the Amount or Secured or Priority Status of a Claim

18 The Debtors, the Reorganized Debtors and the First Lien Steering Committee reserve
 19 the right to object to the amount or the secured or priority status of any Claim or Interest. The
 20 estimates set forth in the Disclosure Statement cannot be relied on by any Holder of a Claim
 21 or Interest whose Claim or Interest is subject to an objection. Any such Holder of a Claim or
 22 Interest may not receive its specified share of the estimated distributions described in the
 23 Disclosure Statement.

24 6. Procedures for Contingent and Unliquidated Claims

25 Notwithstanding any language in any Proof of Claim or otherwise, the Holder of a
 26 contingent or unliquidated Claim shall not be entitled to receive or recover any amount in
 27 excess of the amount: (a) stated in the Holder's Proof of Claim, if any, as of the Distribution
 28 Record Date; or (b) if the Proof of Claim does not ascribe a monetary value to such Holder's
 29 Claim on the Distribution Record Date, the amount the First Lien Steering Committee elects
 30 to withhold on account of such Claim.

31 7. Nonconsensual Confirmation

32 In the event that any impaired class of claims or interests does not accept a chapter 11
 33 plan, a bankruptcy court may nevertheless confirm such plan at the plan proponent's request if
 34 at least one impaired class has accepted the plan (with such acceptance being determined
 35 without including the vote of any "insider" in such class), and as to each impaired class that
 36 has not accepted the plan, the bankruptcy court determines that the plan "does not
 37 discriminate unfairly" and is "fair and equitable" with respect to the dissenting impaired
 38 classes. The First Lien Steering Committee believes that the Plan satisfies these requirements,
 39 and the First Lien Steering Committee may request such nonconsensual Confirmation in

1 accordance with section 1129(b) of the Bankruptcy Code. Nevertheless, there can be no
 2 assurance that the Bankruptcy Court will reach this conclusion.

3 **B. Other Considerations**

4 **I. Avoidance Action Analysis**

5 The First Lien Steering Committee has not yet comprehensively evaluated all of the
 6 preference and fraudulent transfer claims that the Debtors may have against third parties. The
 7 Debtors Filed their Schedules listing all transfers that the Debtors made within ninety days of
 8 the Petition Date and all transfers to insiders made by the Debtors within one year of the
 9 Petition Date. All such transfers listed in the Schedules may be the subject of an Avoidance
 10 Action to set aside the transfer if the transfer is avoidable under Bankruptcy Code sections
 11 544, 545, 547, 548, 549, or 550, or otherwise except as expressly released by the Plan.
 Accordingly, the Reorganized Debtors or Litigation Trust, as applicable, will retain rights to
 seek to avoid any transfer made within ninety days of the Petition Date and one year of the
 Petition Date (as to Insiders) or such longer periods as may be available under applicable non-
 bankruptcy law.

12 The listing of transfers made by the Debtors within ninety days (for non-insiders) and
 13 one year (for Insiders) that may be potentially avoidable as preferences is not included in this
 14 Disclosure Statement. Copies of the Schedules (which include the identification of transfers
 15 made by the Debtors within ninety days (for non-insiders) and one year (for Insiders)) are on
 file with the Bankruptcy Court and also available for review on the Claims and Solicitation
 16 Agent's website, www.omnimgmt/rhodes. Creditors and interested parties are encouraged to
 review such Schedules to determine if any transfers made to a particular Creditor are included
 17 thereon. Any such transfers listed in the Schedules may be the subject of an Avoidance Action
 18 to set aside the transfer if the transfer is avoidable. However, with respect to such transfers
 listed on the Debtors' Schedules, the First Lien Steering Committee has not yet determined
 whether the transferees of those transfers would have defenses to an avoidance action.

19 **2. Other Potential Litigation Recoveries**

20 In addition to Avoidance Actions, the First Lien Steering Committee has been
 21 reviewing available information regarding potential Causes of Action against third parties and,
 22 possibly, Affiliates and/or Insiders of the Debtors, which review is ongoing and which will
 23 continue to be conducted by the First Lien Steering Committee, the Reorganized Debtors
 24 and/or their respective successors or representatives after the Effective Date. Due to the size
 and scope of the business operations of the Debtors and the multitude of business transactions
 25 therein, there may be various Causes of Action that currently exist or may subsequently arise
 26 in addition to any matters identified in the Plan. The potential net proceeds from the potential
 27 Causes of Action identified herein or that may subsequently arise or be pursued are
 speculative and uncertain. Prepetition, the Debtors were party to numerous lawsuits. A list of
 the pending litigation in which the Debtors were a party as of the Petition Date is attached to
 the Disclosure Statement as Exhibit F.

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1 Except as expressly released through the Plan, existing or potential Causes of Action
 2 that may be pursued by the Debtors and/or their respective successors or representatives (as
 3 applicable) include, without implied limitation, the following: (a) any and all Avoidance
 4 Actions; (b) any and all litigation against Affiliates and Insiders; (c) all other Causes of Action
 5 and Defenses identified on Exhibit L to the Disclosure Statement; (d) any other Causes of
 6 Action against current or former officers, directors, and/or employees of the Debtors,
 7 including without implied limitation, any pending or potential claims with respect to directors
 8 and officers' insurance coverage for the Debtors' current or former officers and directors; (e)
 9 any and all Causes of Action relating to the matters listed on the Debtors' Schedules; (f) any
 10 other litigation, whether legal, equitable or statutory in nature, arising out of, or in connection
 with the Debtors' businesses or operations, including, without limitation: disputes with
 suppliers and customers, overpayments, any amounts owed by any creditor, vendor or other
 entity, employee, management, or operational matters, disputes with current or former
 employees, financial reporting, environmental matters, insurance matters, accounts receivable,
 warranties, contractual obligations, or tort claims that may exist or subsequently arise; and (g)
 any Causes of Action not expressly identified herein or in the Plan.

11 3. Estimation of Claims

12 Before or after the Effective Date, the Debtors, the First Lien Steering Committee, or
 13 the Reorganized Debtors, as applicable, may (but are not required to) at any time request that
 14 the Bankruptcy Court estimate any Disputed Claim that is contingent or unliquidated pursuant
 15 to section 502(c) of the Bankruptcy Code for any reason, regardless of whether any party
 16 previously has objected to such Claim or whether the Bankruptcy Court has ruled on any such
 17 objection, and the Bankruptcy Court shall retain jurisdiction to estimate any such Claim,
 18 including during the litigation of any objection to any Claim or during the appeal relating to
 19 such objection. Notwithstanding any provision otherwise in the Plan, a Claim that has been
 20 expunged from the Claims Register, but that either is subject to appeal or has not been the
 21 subject of a Final Order, shall be deemed to be estimated at zero dollars, unless otherwise
 22 ordered by the Bankruptcy Court. In the event that the Bankruptcy Court estimates any
 23 contingent or unliquidated Claim, that estimated amount shall constitute a maximum
 24 limitation on such Claim for all purposes under the Plan (including for purposes of
 25 distributions), and the relevant Reorganized Debtor may elect to pursue any supplemental
 26 proceedings to object to any ultimate distribution on such Claim. Notwithstanding section
 27 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been
 28 estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek
 reconsideration of such estimation unless such Holder has Filed a motion requesting the right
 to seek such reconsideration on or before twenty days after the date on which such Claim is
 estimated.

25 C. Plan Risk Factors

26 Although the First Lien Steering Committee believes that the Plan is confirmable,
 27 there are some risks to the performance of the Plan. Certain specific risks to performance of
 28 the Plan are described below. In particular, distributions to Holders of First Lien Lender
 Secured Claims are driven by the success of the Reorganized Debtors in, among other things,
 the development and completion of their real property assets and sale or other disposition

1 thereof. Additionally, because of the significant issues that must be addressed with respect to
 2 the allowance of Claims, there may be significant delay before any distribution is made on
 3 account of Allowed Claims. However, the First Lien Steering Committee believes the very
 4 same risks described herein are present in, and significantly greater to Creditors in, chapter 7
 cases.

5 **1. The Chapter 7 Liquidation Analysis and Going Concern Analysis Are Based on
 Estimates and Numerous Assumptions**

6 Underlying the chapter 7 Liquidation Analysis and Going Concern Analysis are a
 7 number of estimates and assumptions that, although developed and considered reasonable by
 8 RCLCO, are inherently subject to economic, business and competitive uncertainties and
 9 contingencies beyond the First Lien Steering Committee's or RCLCO's control. Accordingly,
 10 there can be no assurance that the values assumed in the chapter 7 Liquidation Analysis or
 11 Going Concern Analysis will be realized.

12 **2. The Reorganized Debtors May Lose the Services of Critical Employees with
 Extensive Knowledge of Operations**

13 The First Lien Steering Committee believes that the Reorganized Debtors' ability to
 14 maximize the value of the Debtors' estates pursuant to the Plan will depend to a large extent
 15 on the efforts of certain employees currently working for the Debtors, which personnel have
 16 substantial experience with and knowledge of the Debtors' businesses, operations and assets.
 17 While the Reorganized Debtors hope to retain such employees' services after the Effective
 Date, to the extent needed, it is possible that some or many of said employees may resign or
 otherwise leave the employ of the Reorganized Debtors. In such case, the business related
 efforts undertaken pursuant to the Plan may be negatively affected, resulting in potentially less
 recovery for Creditors under the Plan.

18 **3. The Reorganized Debtors May Not Be Successful With Respect to Contested
 Claims**

19 If the First Lien Steering Committee, the Reorganized Debtors, and/or their successors
 20 or representatives under the Plan are unsuccessful in their objections to contested and
 21 contingent Claims that have been Filed against the Estates or their Avoidance Actions, the
 22 Estates' total liabilities will be greater than expected, and there may be less Cash available for
 23 distribution to Holders of unsecured non-priority Claims. The First Lien Steering Committee
 24 intends to vigorously oppose the allowance of all Claims that it believes are either entirely or
 25 in part without merit and prosecute Avoidance Actions and other Causes of Action. However,
 26 if the First Lien Steering Committee's objections and actions are not upheld by the
 Bankruptcy Court, and the applicable Claims are Allowed in amounts in excess of the
 amounts that have been accrued by the Debtors, the total liabilities of the Debtors will be
 greater than expected, and there will be less Cash than expected available for distribution to
 Creditors.

1 4. Litigation Recoveries and Results Are Highly Speculative and Uncertain

2 The success of the Litigation Trust, Reorganized Debtors and/or their respective
 3 successors or representatives under the Plan in pursuing Avoidance Actions and/or other
 4 Causes of Action and defenses, is speculative and uncertain. Litigation may be complex and
 5 involve significant expense and delay. Furthermore, even if successful in the Causes of
 6 Action, in some cases, the Litigation Trust, Reorganized Debtors and/or their respective
 7 successors or representatives under the Plan may encounter difficulty in collection. Although
 potential litigation recoveries are not included in the First Lien Steering Committee's Plan
 Distribution Analysis or chapter 7 Liquidation Analysis, such recoveries may have a
 significant impact upon the distributions that may be made to Creditors.

8 THESE CONSIDERATIONS CONTAIN CERTAIN STATEMENTS THAT ARE
 9 "FORWARD-LOOKING STATEMENTS" WITHIN THE MEANING OF THE PRIVATE
 SECURITIES LITIGATION REFORM ACT OF 1995. WORDS SUCH AS "EXPECT,"
 10 "PLANS," "ANTICIPATES," "INDICATES," "BELIEVES," "FORECAST," "GUIDANCE,"
 "OUTLOOK" AND SIMILAR EXPRESSIONS ARE INTENDED TO IDENTIFY
 11 FORWARD LOOKING STATEMENTS. ADDITIONALLY, FORWARD LOOKING
 STATEMENTS INCLUDE STATEMENTS WHICH DO NOT RELATE SOLELY TO
 HISTORICAL FACTS, SUCH AS STATEMENTS WHICH IDENTIFY UNCERTAINTIES
 12 OR TRENDS, DISCUSS THE POSSIBLE FUTURE EFFECTS OF CURRENT KNOWN
 TRENDS OR UNCERTAINTIES OR WHICH INDICATE THAT THE FUTURE EFFECTS
 13 OF KNOWN TRENDS OR UNCERTAINTIES CANNOT BE PREDICTED,
 GUARANTEED OR ASSURED. THESE STATEMENTS ARE SUBJECT TO A NUMBER
 14 OF ASSUMPTIONS, RISKS AND UNCERTAINTIES, MANY OF WHICH ARE BEYOND
 THE CONTROL OF THE DEBTORS, THE REORGANIZED DEBTORS OR THE FIRST
 15 LIEN STEERING COMMITTEE INCLUDING, WITHOUT LIMITATION, THOSE
 DESCRIBED ELSEWHERE IN THIS DISCLOSURE STATEMENT, THE
 IMPLEMENTATION OF THE PLAN, THE CONTINUING AVAILABILITY OF
 16 SUFFICIENT BORROWING CAPACITY OR OTHER FINANCING TO FUND
 OPERATIONS, NATURAL DISASTERS AND UNUSUAL WEATHER CONDITIONS,
 TERRORIST ACTIONS OR ACTS OF WAR, ACTIONS OF GOVERNMENTAL BODIES
 17 AND OTHER MARKET AND COMPETITIVE CONDITIONS. HOLDERS OF CLAIMS
 AND INTERESTS ARE CAUTIONED THAT THE FORWARD LOOKING STATEMENTS
 18 SPEAK AS OF THE DATE MADE AND ARE NOT GUARANTEES OF FUTURE
 PERFORMANCE. ACTUAL RESULTS OR DEVELOPMENTS MAY DIFFER
 19 MATERIALLY FROM THE EXPECTATIONS EXPRESSED OR IMPLIED IN THE
 FORWARD LOOKING STATEMENTS, AND NONE OF THE DEBTORS, THE
 REORGANIZED DEBTORS OR THE FIRST LIEN STEERING COMMITTEE SHALL BE
 20 REQUIRED TO UNDERTAKE OR HAVE ANY OBLIGATION TO UPDATE ANY SUCH
 STATEMENTS. ADDITIONAL RISKS AND UNCERTAINTIES NOT PRESENTLY
 KNOWN TO THE FIRST LIEN STEERING COMMITTEE OR THAT THE FIRST LIEN
 21 STEERING COMMITTEE CURRENTLY BELIEVES TO BE IMMATERIAL MAY ALSO
 IMPAIR THE DEBTORS' BUSINESS, FINANCIAL CONDITION, RESULTS OF
 OPERATIONS AND THE VALUE OF THE DEBTORS' ESTATES. IF ANY OF THE
 22 RISKS OCCUR, THE DEBTORS' BUSINESS, FINANCIAL CONDITION, OPERATING
 RESULTS AND THE VALUE OF THE DEBTORS' ESTATES, AS WELL AS THE FIRST
 23
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LIEN STEERING COMMITTEE'S ABILITY TO CONSUMMATE THE PLAN, COULD BE MATERIALLY ADVERSELY AFFECTED.

Article VII.
CERTAIN FEDERAL INCOME TAX CONSEQUENCES

The following discussion summarizes certain federal income tax consequences of the implementation of the Plan to the Debtors and certain Holders of Claims. **Tax consequences for the Reorganized Debtors are addressed in Article VII.A. below.** The following summary is based on the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code" or "IRC"), Treasury Regulations promulgated thereunder (the "Regulations"), judicial decisions and published administrative rules and pronouncements of the Internal Revenue Service as in effect on the date hereof. Changes in such rules or new interpretations thereof may have retroactive effect and could significantly affect the federal income tax consequences described below.

The federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The First Lien Steering Committee has not requested and will not request a ruling from the Internal Revenue Service or an opinion of counsel with respect to any of the tax aspects of the Plan. Thus, no assurance can be given as to the interpretation that the Internal Revenue Service will adopt. In addition, this summary does not address foreign, state or local tax consequences of the Plan, nor does it purport to address the federal income tax consequences of the Plan to special classes of taxpayers (such as Persons who are related to the Debtors within the meaning of the Internal Revenue Code, foreign taxpayers, broker dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, tax exempt organizations, investors in pass through entities and Holders of Claims who are themselves in bankruptcy). Furthermore, this discussion assumes that Holders of Claims hold only Claims in a single Class. Holders of Claims should consult their own tax advisors as to the effect such ownership may have on the federal income tax consequences described below.

This discussion assumes that, except as recharacterized by a Final Order of the Bankruptcy Court, the various debt and other arrangements to which the Debtors are a party will be respected for federal income tax purposes in accordance with their form.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

INTERNAL REVENUE SERVICE CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE UNITED STATES INTERNAL REVENUE SERVICE, ANY TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED

1 OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE
 2 PURPOSE OF AVOIDING TAX RELATED PENALTIES UNDER THE INTERNAL
 3 REVENUE CODE. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT
 4 (INCLUDING ANY ATTACHMENTS) IS NOT WRITTEN TO SUPPORT THE
 5 PROMOTION, MARKETING OR RECOMMENDATION TO ANOTHER PARTY OF THE
 6 TRANSACTIONS OR MATTERS ADDRESSED BY THIS DISCLOSURE STATEMENT.
 7 EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S
 8 PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

9 A. Certain U.S. Federal Income Tax Consequences to Reorganized Debtors

10 1. Introduction

11 The majority of the Debtors are either partnerships (general or limited) or LLCs. For
 12 U.S. federal income tax purposes, the single member limited liability companies have not
 13 elected to be treated as associations taxable as corporations. Debtors that are multi-member
 14 LLCs are taxed as partnerships for U.S. federal income tax purposes. The First Lien Steering
 15 Committee does not believe that the Debtors will suffer any adverse tax consequences as a
 16 result of the consummation of the Plan.

17 2. Partnership

18 A partnership is not itself a taxpaying entity for U.S. federal income tax purposes, and
 19 a partnership's income or loss (and items thereof) for each taxable period during which it is in
 20 existence is allocated among its partners, who are required to report the income or loss (and
 21 items thereof) allocated to them on their own tax returns. Generally, a partner is not allowed
 22 to deduct his or her share of partnership losses for the year in excess of the adjusted tax basis
 23 of his or her interest in the partnership, determined as of the end of the partnership's taxable
 24 year in which the loss occurs. Any excess is allowed in any subsequent year in which the
 25 adjusted tax basis increases. A partner's tax basis is initially equal to the amount of cash and
 26 the adjusted tax basis of property contributed to the partnership.

27 Thereafter, tax basis increases for such items as additional contributions and the
 28 partner's share of taxable and tax-exempt income and gain, and tax basis decreases for such
 29 items as distributions and the partner's share of losses. An increase in a partner's share of
 30 partnership liabilities or a partner's assumption of partnership liabilities is treated as a cash
 31 contribution to the partnership that increases tax basis, and a decrease in a partner's share of
 32 partnership liabilities or the assumption by the partnership of a partner's liabilities decreases
 33 tax basis, but not below zero. (Cash distributions, including a decrease in a partner's share of
 34 partnership liabilities, in excess of tax basis is taxable and generally treated as gain from the
 35 sale of a partnership interest.) A partner shares partnership recourse liabilities to the extent the
 36 partner bears the economic risk of loss with respect to the liabilities, i.e., based on a
 37 hypothetical partnership liquidation at a time when the partnership has no assets, after taking
 38 into account any rights of contribution or reimbursement from other partners or third parties
 39 that are related to other partners. A partner also shares partnership nonrecourse liabilities.

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1 3. Cancellation of Indebtedness Income

2 Under the Internal Revenue Code, cancellation of indebtedness ("COD") income is
 3 recognized by a partnership to the extent, and at the time, that certain debts are discharged for
 4 less than full payment. The COD income recognized at the partnership level is then allocated
 5 among the partners pursuant to the allocation provisions of the partnership agreement, if such
 6 provisions comply with the requirements of the Internal Revenue Code regarding allocations,
 7 or, if not, in accordance with the partners' interests in the partnership. The amount of COD
 8 income, in general, is the excess of (a) the adjusted issue price of the indebtedness satisfied,
 9 over (b) the sum of (x) the amount of cash paid, (y) the issue price of debt that is not publicly
 10 traded nor deemed exchanged for publicly traded property and (z) the fair market value of any
 11 new consideration (including partnership interests) given in satisfaction of such indebtedness
 12 at the time of the exchange. COD income also includes any interest that the taxpayer
 13 deducted under the accrual method of accounting but remains unpaid at the time the
 14 indebtedness is discharged. COD income generally does not include the discharge of
 15 indebtedness to the extent the payment of the liability would have given rise to a deduction.

16 The Plan currently contemplates that Newco will hold the assets of some and the
 17 equity of at least one of the Reorganized Debtors, which ordinarily would result in COD
 18 income upon the discharge of the debts. Based on Revenue Ruling 99-6, however, the
 19 purchase of the membership interests in Heritage Land Company, LLC, however, may be
 20 treated as a taxable exchange of their membership interests by its members resulting in the
 21 recognition of gain or loss to the members based on a sales price of \$10 plus the amount of the
 22 First Lien Lender Secured Claims, and as a purchase of assets for their then fair market value
 23 by Newco, with any cancellation of debt attributable to the former members of Heritage.
 24 Because the Plan provides that Holders of certain Allowed Claims will receive Newco Equity
 25 Interests, the sales price and/or the amount of COD income will depend on the fair market
 26 value of the Newco Equity Interests exchanged therefor. This value cannot be known with
 27 certainty until after the Effective Date. The Plan provides that any cancellation of
 28 indebtedness that may be derived from the foregoing transactions be allocable to the holders
 1 of the Old Equity Interests. However, it is unclear whether this provision will be binding on
 2 the Internal Revenue Service.

3 Because most of the Debtors' indebtedness is owed by entities that are partnerships or
 4 disregarded entities for U.S. federal income tax purposes, virtually all of the Debtors' COD
 5 income that will be generated from the Plan will be allocated to the members of Heritage
 6 Land Company LLC or other Reorganized Debtor based on their respective percentage
 7 ownership interests in Heritage Land Company LLC or other Reorganized Debtor. Under the
 8 U.S. federal income tax rules dealing with COD income, the tax treatment of that income will
 9 be determined with respect to each member at the member level.

10 A member of Heritage Land Company LLC or other Reorganized Debtor will not be
 11 required to include any amount of COD income in gross income if the member is (i) under the
 12 jurisdiction of a court in a case under chapter 11 of the Bankruptcy Code and the discharge of
 13 debt occurs pursuant to that proceeding or (ii) insolvent before the Effective Date (in which,
 14 the COD income may be excluded to the extent of the insolvency). As a consequence of such
 15 exclusion, a member must reduce its tax attributes by the amount of COD income that it

1 excluded from gross income pursuant to section 108 of the IRC. In general, tax attributes will
 2 be reduced in the following order: (a) net operating losses ("NOLs"); (b) most tax credits and
 3 capital loss carryovers; (c) tax basis in assets; and (d) foreign tax credits. A member with
 4 COD income may elect first to reduce the basis of its depreciable assets pursuant to section
 5 108(b)(5) of the IRC. Nonetheless, any attribute reduction will be applied as of the first day
 6 following the taxable year in which a member recognizes COD income. If a member has a
 suspended loss with respect to its membership interest in Heritage Land Company LLC, the
 allocation of COD income may allow some or all of such suspended losses to be used to offset
 the COD income.

7 A recently enacted amendment to the COD income rules provides that taxpayers that
 8 recognize COD income in 2009 or 2010 may elect to forgo the COD income exclusion and
 9 attribute reduction rules described above. Instead, the taxpayer may elect to take into taxable
 10 income the COD income with respect to such debt in equal installments in 2014 through 2018
 11 (i.e., the taxpayer would report 20% of the COD income in each such year). This election to
 12 defer COD income is made separately with respect to each debt instrument on which COD
 13 income is realized, must be made on the taxpayer's tax return for the year that includes the
 14 transaction that creates the COD income, and, in the case of debt of a partnership, is made at
 15 the partnership level, but recent IRS guidance allows taxpayers to make partial elections and
 permits partnerships to choose which partners defer which amount, if any. The guidance also
 provides that a taxpayer is not required to make an election for the same COD income portion
 arising from each reacquired applicable debt instrument, though he or she may make an
 election for different portions of such income arising from different applicable debt
 instruments. The Debtors have not yet determined whether such an election will be made with
 respect to the COD income generated in connection with the consummation of the Plan.

16 4. Recent Tax Amendments

17 The law governing net operating loss ("NOL") carrybacks was amended November 6,
 18 2009. It permits taxpayers to elect to carry back either their 2008 or 2009 operating losses for
 19 3, 4 or even 5 years, rather than the normal 2 years. Losses may be carried back 3 or 4 years
 20 to offset all income generated in those years. Losses carried back the 5th year can only offset
 half of the income in that year. In addition, this law suspends the application of the normal
 21 year that NOLs can only offset 90% of alternative minimum taxable income for losses for the
 22 carrybacks covered by this provision. Taxpayers may file an irrevocable election to carry
 23 back 2008 or 2009 losses (but not both 2008 and 2009 losses) for this extended period at any
 time up to the due date of their 2009 returns (including extensions). The Rhodes Entities may
 realize additional tax benefits as a result of the foregoing amendment.

24 In the case of a partnership (or LLC treated as a partnership for tax purposes), these
 25 rules apply at the partner level, with the partner including its allocable share of the entity's
 26 losses. In the case of an S corporation, similar rules apply, albeit with different limitations on
 27 the ability to use such losses due to different basis rules. Since the Debtors' businesses were
 28 not carried on by a corporation, but were carried on through pass-through entities (i.e.,
 partnerships, LLCs taxable as partnerships, an S corporation, and LLCs disregarded for tax
 purposes), this legislation will not result in any recoveries to the Debtors from carrying back
 NOLs the additional three years.

1
2 B. Certain Federal Income Tax Consequences to Holders of Claims

3 1. Consequences to Holders of Allowed Class A-1 First Lien Lender Secured
4 Claims

5 On the Effective Date, each of the First Lien Lenders shall receive (i) its pro rata share
6 of \$1.5 million in Cash from the proceeds of the First Lien Lenders' Collateral, (ii) its pro rata
7 share of 100% of the New First Lien Notes, and (iii) its pro rata share of 100% of the Newco
8 Equity Interests on account of its Allowed Secured Claim.

9 a. New First Lien Notes

10 (i) Significant Modification

11 The U.S. federal income tax consequences of the exchange of an Allowed First Lien
12 Lender Secured Claim for an interest in the New First Lien Notes will depend on whether the
13 exchange results in a "significant modification" of the Allowed First Lien Lender Secured
14 Claims (i.e., whether the terms of the New First Lien Notes are significantly different from the
15 terms of the First Lien Lender Secured Claims exchanged therefor). The Treasury
16 Regulations under section 1001 of the IRC provide specific rules for determining whether
17 certain modifications are "significant." One such rule provides that a change in the annual
18 yield of an instrument will be considered "significant" if the modified rate varies from the
19 original rate by more than the greater of (a) 25 basis points and (b) 5 percent of the annual
20 yield of the unmodified instrument. Another rule provides that the deferral of a scheduled
21 payment will be considered "significant" unless the deferred payments are unconditionally
22 payable during the period that begins on the initial due date for such payment and extends for
23 the lesser of five years or 50% of the original term of the debt instrument. The exchange
24 should result in a significant modification of the First Lien Lender Secured Claims because
25 the terms of the New First Lien Notes, including the issuer, the interest rate and maturity date,
26 are significantly different from the terms of the First Lien Lender Secured Claims. Therefore,
27 the exchange of Allowed First Lien Lender Secured Claims for New First Lien Notes should
28 be a taxable exchange under section 1001 of the IRC.

21 (ii) Recognition of Gain or Loss

22 A Holder who receives New First Lien Notes with respect to an Allowed First Lien
23 Lender Secured Claim will generally recognize income, gain or loss for U.S. federal income
24 tax purposes in an amount equal to the difference between (a) the issue price (as described
25 below) of any New First Lien Notes received and (b) the Holder's adjusted basis in its
26 Allowed First Lien Lender Secured Claim. Such gain or loss may be capital in nature (subject
27 to the "market discount" rules described below) and may be long-term capital gain or loss if
28 the First Lien Lender Secured Claims were held for more than one year. To the extent that a
portion of the New First Lien Notes received represents accrued but unpaid interest that the
Holder has not already included in income, the Holder may recognize ordinary interest
income (as described below). A Holder's tax basis in any New First Lien Notes received
should equal the issue price of the New First Lien Notes as of the date distributed to the

Holder, and a Holder's holding period for the New First Lien Notes should begin on the day following the exchange.

(iii) Stated Interest and Original Issue Discount

A Holder of the New First Lien Notes will be required to include stated interest on the New First Lien Notes in income in accordance with the Holder's regular method of accounting to the extent such stated interest is "qualified stated interest." All stated interest on the New First Lien Notes that is unconditionally payable in Cash or property (other than debt instruments of the issuer, such as PIK interest (discussed below)) at least annually will be generally treated as "qualified stated interest". The amount of qualified stated interest and the amount of original issue discount ("OID"), if any, that accrues during an accrual period on a New First Lien Note will be calculated by assuming that LIBOR is a fixed rate equal to the value of LIBOR as of the issue date. The qualified stated interest allocable to an accrual period is increased (or decreased) if the interest actually paid during an accrual period exceeds (or is less than) the interest assumed to be paid during the accrual period pursuant to the foregoing rules.

Because the New First Lien Notes provide for the payment of PIK interest in lieu of paying Cash interest, the New First Lien Notes will be treated as issued with OID. The payment of PIK interest will generally not be treated as a payment of interest for federal income tax purposes. Instead, a New First Lien Note and any PIK interest will be treated as a single debt instrument under the OID rules. For U.S. federal income tax purposes, increasing the principal amount of the New First Lien Notes will generally be treated the same as the payment of PIK interest.

Each Creditor will generally be required to include OID in its gross income as such OID accrues over the term of the New First Lien Notes without regard to the Creditor's regular method of accounting for U.S. federal income tax purposes and in advance of the receipt of Cash payments attributable to that income. Accordingly, a Holder could be treated as receiving interest income in advance of a corresponding receipt of Cash.

The rules regarding OID are complex and the rules described above may not apply in all cases. Accordingly, Holders should consult their own tax advisors regarding their application.

b. Newco Equity Interests

(i) Exchange Treatment

For U.S. federal income tax purposes, the treatment of the exchange of Allowed First Lien Lender Secured Claims for Newco Equity Interests is unclear. Such exchange may be treated (i) as a tax-free contribution of property to Heritage Land Company LLC or other Reorganized Debtor under section 721 of the Internal Revenue Code or, alternatively, (ii) as a taxable exchange under section 1001 of the Internal Revenue Code in its entirety. Under the regulations proposed by the Treasury, the exchange would be treated as a tax-free contribution. No gain or loss should be recognized with respect to the exchange of Claims for Newco Equity Interests and a Holder will have an initial tax basis in such Newco Equity